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9
10 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
11 **BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No.: VN-2005-194

13 **SYLVIA BOLDEN,**

a.k.a.: SYLVIA D. BOLDEN,

SYLVIA DIANE BOLDEN,

DIANE BOLDEN,

SYLVIA WRIGHT BOLDEN,

SYLVIA WRIGHT,

SYLVIA D. WRIGHT

A C C U S A T I O N

17 4544 Ohio Street, No. 2

18 San Diego, CA 92116

19 Vocational Nurse License No. VN 137616

Respondent.

20 Complainant alleges:

21 **PARTIES**

22 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation
23 solely in her official capacity as the Executive Officer of the Bureau of Vocational Nursing and
24 Psychiatric Technicians ("Bureau"), Department of Consumer Affairs.

25 2. On or about August 31, 1987, the Bureau issued Vocational Nurse License
26 Number VN 137616 to Sylvia Bolden, also known as Sylvia D. Bolden, Sylvia Diane Bolden,
27 Sylvia Wright Bolden, Sylvia Wright, and Sylvia D. Wright ("Respondent"). The vocational
28 nurse license will expire on March 31, 2009, unless renewed.

STATUTORY PROVISIONS

3. Section 2875 of the Business and Professions Code ("Code") states:

Every licensee may be disciplined as provided in this article. The proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

4. Section 118, subdivision (b), of the Code states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction with the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

1 The board may deny a license pursuant to this subdivision only if the crime or act
2 is substantially related to the qualifications, functions or duties of the business or
profession for which application is made.

3 (b) Notwithstanding any other provision of this code, no person shall be
4 denied a license solely on the basis that he has been convicted of a felony if he has
5 obtained a certificate of rehabilitation under Section 4852.01 and following of the
6 Penal Code or that he has been convicted of a misdemeanor if he has met all
7 applicable requirements of the criteria of rehabilitation developed by the board to
8 evaluate the rehabilitation of a person when considering the denial of a license
under subdivision (a) of Section 482.

9 (c) A board may deny a license regulated by this code on the ground that the
10 applicant knowingly made a false statement of fact required to be revealed in the
11 application for such license.

12 7. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to evaluate the
14 rehabilitation of a person when:

15 (a) Considering the denial of a license by the board under Section 480; or

16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation
18 furnished by the applicant or licensee.

19 8. Section 490 of the Code states:

20 (a) In addition to any other action that a board is permitted to take against a
21 licensee, a board may suspend or revoke a license on the ground that the licensee
22 has been convicted of a crime, if the crime is substantially related to the
23 qualifications, functions, or duties of the business or profession for which the
24 license was issued.

25 (b) Notwithstanding any other provision of law, a board may exercise any
26 authority to discipline a licensee for conviction of a crime that is independent of
27 the authority granted under subdivision (a) only if the crime is substantially
28 related to the qualifications, functions, or duties of the business or profession for
which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of
guilty or a conviction following a pleas of nolo contendere. Any action that a
board is permitted to take following the establishment of a conviction may be
taken when the time for appeal has elapsed, or the judgment of conviction has
been affirmed on appeal, or when an order granting probation is made suspending
the imposition of sentence, irrespective of a subsequent order under the provisions
of *Section 1203.4 of the Penal Code*.

(d) The Legislature hereby finds and declares that the application of this
section has been made unclear by the holding in *Petropoulos v. Department of
Real Estate*(2006) 142 Cal. App.4th 554, and that the holding in that case has
placed a significant number of statutes and regulations in question, resulting in
potential harm to the consumers of California from licensees who have been
convicted of crimes. Therefore, the Legislature finds and declares that this section
establishes an independent basis for a board to impose discipline upon a licensee,
and that the amendments to this section made by Senate Bill 797 of the 2007-08
Regular Session do not constitute a change to, but rather are declaratory of,
existing law.

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1 9. Section 492 of the Code states:

2 Notwithstanding any other provision of law, successful completion of any
3 diversion program under the Penal Code, or successful completion of an alcohol
4 and drug problem assessment program under Article 5 (commencing with Section
5 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
6 any agency established under Division 2 (commencing with Section 500) of this
7 code, or any initiative act referred to in that division, from taking disciplinary
8 action against a licensee or from denying a license for professional misconduct,
9 notwithstanding that evidence of that misconduct may be recorded in a record
10 pertaining to an arrest.

11 This section shall not be construed to apply to any drug diversion program
12 operated by any agency established under Division 2 (commencing with Section
13 500) of this code, or any initiative act referred to in that division.

14 10. Section 493 of the Code states:

15 Notwithstanding any other provision of law, in a proceeding conducted by a board
16 within the department pursuant to law to deny an application for a license or to
17 suspend or revoke a license or otherwise take disciplinary action against a person
18 who holds a license, upon the ground that the applicant or the licensee has been
19 convicted of a crime substantially related to the qualifications, functions, and
20 duties of the licensee in question, the record of conviction of the crime shall be
21 conclusive evidence of the fact that the conviction occurred, but only of that fact,
22 and the board may inquire into the circumstances surrounding the commission of
23 the crime in order to fix the degree of the discipline or to determine if the
24 conviction is substantially related to the qualifications, functions, and duties of the
25 licensee in question. . . .

26 11. Section 2878 of the Code states, in pertinent part:

27 The Board may suspend or revoke a license issued under this chapter for
28 any of the following:

 (a) Unprofessional conduct, which includes, but is not limited
 to, the following:

 ...
 (6) Failure to report the commission of any act
 prohibited by this section.

 (b) Procuring a certificate by fraud, misrepresentation, or
 mistake.

 ...
 (e) Making or giving any false statement or information in
 connection with the application for issuance of a license.

 (f) Conviction of a crime substantially related to the
 qualifications, functions, and duties of a licensed vocational nurse, in which event
 the record of the conviction shall be conclusive evidence of the conviction.

 ...
 (j) The commission of any act involving dishonesty, when that
 action is related to the duties and functions of the licensee.

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12. Section 2878.5 of the Code states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof.

...

13. Section 2518.6 of Title 16, California Code of Regulations, states, in pertinent

part:

(b) A licensed vocational nurse shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:

...

(4) Abstaining from chemical/substance abuse.

(c) A violation of this section constitutes unprofessional conduct for purposes of initiating disciplinary action.

14. Section 2521 of Title 16, California Code of Regulations, states, in pertinent part:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

...

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

15. Section 2522.5 of Title 16, California Code of Regulations, states:

(a) When considering the suspension or revocation of a license on the ground that a licensed vocational nurse has been convicted of a crime, the Board, in evaluation the rehabilitation of such person and his eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or

offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

(b) Petition for Reinstatement. when considering a petition for reinstatement of a license under the provisions of Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in Section 2522 of this article.

COST RECOVERY

16. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(August 31, 1999 Criminal Conviction-Reckless Driving on August 29, 1999)

17. Respondent's vocational nurse license is subject to discipline under Code sections 2878, subdivision (f) and 490 in that Respondent has been convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed vocational nurse, as follows:

18. On August 31, 1999, in the Superior Court, County of San Diego, East County Division, in the case entitled *People of the State of California v. Sylvia Diane Bolden* (Super. Ct., 1999, San Diego Cty., East Cty. Div., Case No. C199575), Respondent pled guilty to violating Vehicle Code section 23103.5 (alcohol related reckless driving with prior offense) on August 29, 1999.

19. Respondent was sentenced to probation for three years with the following terms and conditions: (1) obey all laws; (2) pay a fine of \$1,130.00; (3) not drive vehicle with a measurable amount of alcohol in her system; (4) submit to and complete either a blood or breath test if arrested for driving under the influence of any intoxicant; (5) enroll within 7 days and complete the First Conviction Program; (6) not drive without valid license and insurance; (7) report to Substance Abuse Assessment Unit. Complete assessment process and comply with any

1 additional conditions of probation imposed by the Assessor; and (8) totally abstain from drinking
2 alcoholic beverages and not enter any bar or liquor store except in the course of employment.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (March 15, 1999 Criminal Conviction For DUI On December 11, 1998)

5 20. Respondent's vocational nurse license is subject to discipline under Code sections
6 2878, subdivision (f) and 490, in that Respondent has been convicted of a crime that is
7 substantially related to the qualifications, functions, and duties of a licensed vocational nurse, as
8 follows:

9 21. On March 15, 1999, in the Superior Court, County of San Diego, in the case
10 entitled *People of the State of California v. Sylvia Diane Bolden* (Super. Ct., 1999, San Diego
11 Cty., Case No. T204066), Respondent pled guilty to violating Vehicle Code section 23152,
12 subdivision (a) (driving under the influence of alcohol) on December 11, 1998.

13 22. Respondent was sentenced to summary probation for five years with the following
14 terms and conditions: (1) obey all laws; (2) pay a fine of \$1,310.00; (3) not drive vehicle with
15 any alcohol in her system or on her breath; (4) submit to and complete either a blood or breath
16 test if arrested for driving under the influence; (5) enroll within 120 days and complete the First
17 Conviction Program; (6) not drive without valid license and insurance; and (7) driving privilege
18 restricted for 90 days to driving to/from work and court ordered programs.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (April 6, 2000 Criminal Conviction-Fighting In Public On April 4, 2000)

21 23. Respondent's vocational nurse license is subject to discipline under Code sections
22 2878, subdivision (f) and 490, in that Respondent has been convicted of a crime that is
23 substantially related to the qualifications, functions, and duties of a licensed vocational nurse, as
24 follows:

25 23. On April 6, 2000, in the Superior Court, County of San Diego, in the case entitled
26 *People of the State of California v. Sylvia Bolden* (Super. Ct., 2000, San Diego Cty, Case No. M-
27 797939/VZ5836), Respondent pled nolo contendere to violating Penal Code section 415(1)
28 (fighting in public), as a misdemeanor, on April 4, 2000.

1 24. The circumstances of the conviction are that on April 4, 2000, Respondent, while
2 under the influence of alcohol, became involved in a dispute with a neighbor and damaged the
3 neighbor's window.

4 25. Respondent was sentenced to summary probation for three years, ordered to obey
5 all laws and pay a fine of \$245.00.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 (December 22, 1988 Criminal Conviction-Battery on October 21, 1988)

8 26. Respondent's vocational nurse license is subject to discipline under Code sections
9 2878, subdivision (f) and 490, in that Respondent has been convicted of a crime that is
10 substantially related to the qualifications, functions, and duties of a licensed vocational nurse, as
11 follows:

12 27. On or about December 22, 1988, in the Superior Court, County of San Diego, in
13 case entitled *People of the State of California v. Sylvia Diane Bolden* (Super.Ct., 1988, San
14 Diego Cty, Case No. M564768), Respondent pled guilty to violating Penal Code section
15 242/243(a) (battery), as a misdemeanor.

16 According to Respondent's Criminal History Transcript, she was sentenced to, "003 years
17 probation, 180 days jail, fine."

18 **FIFTH CAUSE FOR DISCIPLINE**

19 (June 11, 1990 Criminal Conviction-Public Disturbance on June 10, 1990)

20 28. Respondent's vocational nurse license is subject to discipline under Code sections
21 2878, subdivision (f) and 490, in that Respondent has been convicted of a crime that is
22 substantially related to the qualifications, functions, and duties of a licensed vocational nurse, as
23 follows:

24 29. On or about June 11, 1990, in the Superior Court, County of San Diego, in case
25 entitled *People of the State of California v. Sylvia Wright Bolden* (Super. Ct., 1990, San Diego
26 Cty, Case No. M590043), Respondent pled guilty to violating Penal Code section 415(3)
27 (offensive words in public place), as a misdemeanor, on June 10, 1990.

28 According to Respondent's Criminal History Transcript, she was "convicted-prob/jail."

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1 **PRAYER**

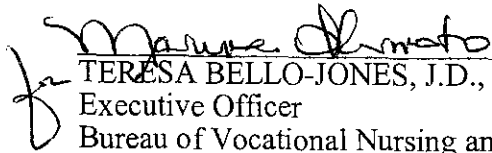
2 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Bureau of Vocational Nursing and Psychiatric
4 Technicians issue a decision:

- 5 1. Revoking or suspending Vocational Nurse License Number VN 137616, issued to
6 Respondent Sylvia Bolden;
- 7 2. Ordering Respondent Sylvia Bolden, pursuant to Code section 125.3, to pay the
8 Bureau of Vocational Nursing and Psychiatric Technicians the reasonable costs of the
9 investigation and enforcement of this case; and
- 10 3. Taking any other and further action as deemed necessary and proper.
- 11

12 DATED: September 19, 2008

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16 TERESA BELLO-JONES, J.D., M.S.N., R.N.
17 Executive Officer
18 Bureau of Vocational Nursing and Psychiatric Technicians
19 Department of Consumer Affairs
20 State of California
21 Complainant
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